***

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3145 of 2007

Date of decision: 06.09.2007

Mohan Singh ...Petitioner

Versus

Karam Singh and others ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. R.S.Ghuman, Advocate for the petitioner.

Mr. Malkeet Singh, Advocate for respondents No.3 and 18.

****

RAJESH BINDAL, J.

Challenge in the present petition, filed under Article 227 of the Constitution of India, is to order dated May 19, 2007 passed by learned Civil Judge (Junior Division), Nawanshahr whereby application of the petitioner for issuing interrogatories to the Special Kanungo, Jalandhar was dismissed.

Learned counsel for the petitioner submitted that the petitioner had earlier moved an application for issuing interrogatories to Special Kanugo, Jalandhar for tracing out the history of ownership of the suit land from the settlement of 1849-50 onwards. The application was allowed by the trial Court vide order dated March 7, 2006 the respondents-defendants having raised no objection to the grant of prayer made in the application. He submitted that inspite of the fact that petitioner had deposited requisite amount for issuing interrogatories, the needful was not done by the office. Accordingly, he moved the fresh application, which was rejected by the Trial Court vide impugned order. Order rejecting the application regarding issuing interrogatories, passed by the trial court on the ground that petitioner had already closed his oral evidence, is not in conformity with

***

law as it was the fault of the office that interrogatories were not sent otherwise the petitioner had infact deposited the requisite amount after acceptance of the application. Still further, he submitted that since the claim made by the petitioner in the suit that the property in dispute is an HUF property, the past history of the ownership of the land in dispute was necessary for the purpose of just and proper decision in the suit.

On the other hand, learned counsel for the respondents submitted that infact no interrogatories could be issued to any person who was not a party to the suit. Order XI Rule 1 of the Code of Civil Procedure is quite explicit on that issue. He submits that even if the counsel for the respondent-defendants had made a concession to that effect still the Court could not grant the relief to that extent as the same was not permissible in law. He further submits that it is the petitioner-plaintiff, who is to be blamed as inspite of his application having been allowed on March 7, 2006 still he did not take any step to see that interrogatories were sent and the report is received during the course of his evidence. Nearly after more than one year the evidence of the petitioner-plaintiff was closed on April 3, 2007 and thereafter the matter was adjourned for tendering of documents, accordingly the petitioner-plaintiff is estopped by his own conduct to claim the relief prayed for.

Having heard learned counsel for the parties, I find merit in the contention raised by learned counsel for the respondents. Bare perusal of order XI Rule I of the Code of Civil Procedure, which is extracted below:-

> "1. Discovery by interrogatories:- In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer.
>
> Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purposes;

***

> Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness."

shows that in any suit the plaintiff/defendant, with the leave of the Court may deliver interrogatories in writing for the examination of the opposite party or any one or more of such party. It does not give any right to either of the parties to send interrogatories to any other person, who is not a party to the suit. In the present case, the petitioner-plaintiff had sought interrogatories to the Special Kanungo, Jalandhar, which was not permissible in terms of Order XI Rule 1 of the Code of Civil Procedure, as admittedly he is not a party to the suit. Once that is so, in my opinion, the prayer made by the petitioner in the present petition cannot be accepted as the acceptance thereof would mean enforcing an illegal order passed by the Court below earlier when application for issuing interrogatories to special Kanungo, Jalandhar was allowed, who was not a party to the suit.

Accordingly, I do not find any merit in the present petition and the same is dismissed.

September 06, 2007 **(Rajesh Bindal)**
Pka **Judge**